

HOUSE BILL REPORT

SSB 5860

As Passed House:

March 1, 2022

Title: An act relating to water policy in regions with regulated reductions in aquifer levels.

Brief Description: Concerning water policy in regions with regulated reductions in aquifer levels.

Sponsors: Senate Committee on Agriculture, Water, Natural Resources & Parks (originally sponsored by Senators Warnick, Dozier and Schoesler).

Brief History:

Committee Activity:

Rural Development, Agriculture & Natural Resources: 2/22/22, 2/23/22 [DP].

Floor Activity:

Passed House: 3/1/22, 97-0.

Brief Summary of Substitute Bill

- Reestablishes the prior process for protecting unused groundwater rights in the Odessa aquifer from relinquishment.

HOUSE COMMITTEE ON RURAL DEVELOPMENT, AGRICULTURE & NATURAL RESOURCES

Majority Report: Do pass. Signed by 15 members: Representatives Chapman, Chair; Shewmake, Vice Chair; Chandler, Ranking Minority Member; Dent, Assistant Ranking Minority Member; Fitzgibbon, Klicker, Kloba, Kretz, Lekanoff, McEntire, Morgan, Orcutt, Ramos, Schmick and Springer.

Staff: Robert Hatfield (786-7117).

Background:

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Groundwater Management Subareas.

Groundwater Management Subareas may be established by rules adopted by the Department of Ecology (Ecology) to address declining aquifer levels and regulate withdrawals of public groundwater.

Ecology has the authority to enter into agreements with the United States and with local irrigation districts to offset aquifer depletions due to groundwater withdrawals. The agreements allow conserved surface water to be delivered to certain lands irrigated by deep wells. Where such deliveries occur, Ecology must issue a superseding water right permit or certificate to indicate that the unused portion of a replaced subarea groundwater right is a reserve right with low flow protection from relinquishment. This reserve right may again be used if the delivery of conserved water is curtailed or otherwise unavailable. The total acreage irrigated under the subarea groundwater right and delivered water must not exceed quantity or acreage limits described in the groundwater permit or certificate.

Relinquishment.

Under the relinquishment statute, if a water right holder abandons or voluntarily fails to beneficially use all or any part of their water right for five successive years without sufficient cause, the right or portion unused reverts to the state. The relinquishment statute provides a list of sufficient causes for voluntary nonuse that protect a water right from relinquishment. Examples of sufficient causes include drought or unavailability of water, certain military service, the operation of legal proceedings, or when waiting for a final determination from Ecology on a change application.

In addition to the instances of sufficient cause described above, the relinquishment statute also establishes a list of exemptions under which there is no relinquishment. Examples of these exemptions include the use of water rights for power development, water rights used only in times of drought or low flow periods, municipal water supply for residential purposes, and water that is placed in the Trust Water Rights Program.

Odessa Groundwater Subarea.

Ecology has adopted rules establishing the Odessa Groundwater Management Subarea. In 2006 the Legislature established a process for a water right holder to avoid relinquishment for the nonuse of a groundwater right from the Odessa aquifer for a period of 15 years if certain conditions were satisfied. A water user who failed to exercise a right to withdraw groundwater from the Odessa Subarea aquifer was deemed to have done so involuntarily due to a drought or low flow period, and thus did not relinquish their right to use the water. The amount of water that was not used was considered a standby or reserve water supply and could be used after the period of nonuse had ended if certain conditions were met. The process required water right holders who chose not to use water to notify Ecology in writing within 180 days of stopping the water use and upon the recommencement of use. These

provisions expired July 1, 2021.

Summary of Bill:

Any period of nonuse of a right to withdraw groundwater from an aquifer within the Odessa Groundwater Subarea is deemed to be involuntary due to a drought or low flow period. Such unused water is deemed a standby or reserve water supply that may again be used after the period of nonuse, provided the following requirements are met:

- reductions in water use are a result of conservation practices, irrigation or water use efficiencies, long- or short-term changes in the types or rotations of crops grown, economic hardship, pumping or system infrastructure costs, unavailability or unsuitability of water, or willing and documented participation in cooperative efforts to reduce aquifer depletion and optimize available water resources;
- withdrawal or diversion facilities are maintained in good operating condition; and
- the Department of Ecology (Ecology) has not issued a superseding water right permit or certificate to designate a portion of the groundwater right replaced by federal Columbia Basin Project water as a standby or reserve right.

A water right holder choosing to not exercise a water right in accordance with the provisions described above must provide notice to Ecology in writing within 180 days of such a choice. The notice must include the name of the water right holder and the number of the permit, certificate, or claim. A water right holder who submitted notice under the prior process as it existed on June 30, 2021, is deemed to have provided such notice.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) The bill just reestablishes a relinquishment protection process for the Odessa Groundwater Management Subarea that was already in place but that expired in 2021. The bill also protects those who have submitted notice prior to the expiration date. It is important to protect the farmers who are taking advantage of this process and preserving the aquifer.

The bill relates to the Odessa Groundwater Replacement Program. The goal of the program is to move deep well irrigators from using groundwater to using surface water from the Bureau of Reclamation. The goal is to retain the remaining groundwater for domestic and municipal purposes, while maintaining over 85,000 acres of productive farmland. It is important because it is an acre-for-acre replacement program, and landowners who want to

participate have to exchange their groundwater permit for a Bureau of Reclamation supply of water. In 2006 the Legislature provided a relinquishment exemption so that landowners could participate in this program. The exception expired in 2021, and there is still need for protections for these landowners.

These groundwater rights were granted to farmers by the Department of Ecology in the 1950s. The government promised it would come back and finish the Columbia Basin Project (CBP). Farmers are able to construct these expensive irrigation systems thanks to the financial assistance received from both the state and federal government.

The bill protects further depletion of the Odessa aquifer while awaiting delivery of surface water. Unsustainable groundwater mining has been occurring for years. The plan was to allow a controlled rate of aquifer depletion until CBP build-out was complete, but the CBP has still not reached build-out. Excusing nonuse of water in the Odessa aquifer optimizes the water available to all water uses. When CBP water is delivered, those groundwater rights will become standby reserve water rights. It is becoming harder to access groundwater in the Odessa area.

(Opposed) None.

Persons Testifying: Senator Judy Warnick, prime sponsor; Mike Schwisow, Columbia Basin Development League and Washington State Water Resources Association; Michele Kiesz, East Basin Irrigators Association.; Dennis Swinger Jr; and Melissa Downes, Department of Ecology.

Persons Signed In To Testify But Not Testifying: None.